

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

WR File NR: S4-34941
WR Doc ID: 4184629

PRIORITY DATE

April 8, 2004

WATER RIGHT NUMBER

S4-34941

MAILING ADDRESS

Bumping Lake Summer Homes
C/O Ralph Berthon
PO Box 2361
Yakima, Washington 98907

Quantity Authorized for Withdrawal or Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
0.11	CFS	0.35

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE		ANNUAL QUANTITY (AC-FT/YR)		PERIOD OF USE (mm/dd)	
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Group Domestic (Indoor Use)	0.11		CFS	0.35		Continuously

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Yakima	Unnamed Creek	Bumping Lake	38-Naches

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Point of Diversion	12162299992	16N	12E	22	NESW	46°51'39.60"N	121°19'7.20"W

Datum: WGS84

Place of Use (See Map: Attachment 1)

PARCEL

12162211001, 12162211002, 12162211003, 12162211004, 12162211005, 12162211006, 12162211007, 12162211009, 12162211010, 12162211012, 12162211013.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Bumping Lake Summer Homes, Tract Nos. 1, 4-9, 11, 12, 14, and 15 all within the SW¼ of un-surveyed Section 22, T. 16 N., R. 12 E.W.M., Snoqualmie National Forest.

by contacting the Central Regional Office for forms to submit your water use data. Contact the Central Regional Office. If you do not have internet access, you can still submit hard copies recorded water use data shall be submitted via the internet. To set up an internet reporting account, recorded water use data shall be submitted via the internet.

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Measurements, Monitoring, Metering and Reporting

During periods of water shortage, priority calls against one or more of the source trust water rights used for mitigation for this project may be made by a third party. If that priority call for water is found to be valid, water use under this authorization may be temporarily curtailed until the priority call for water ends.

The Department of Ecology has assigned an equivalent amount of consumptive use from its portfolio of water rights held in trust to mitigate impacts from this project. You shall pay to the Department of Ecology the involved sum which recovers Ecology's costs for acquiring the water rights and making them available to you, and for storage and delivery of mitigation water under paragraph 15(a) of the United States Bureau of Reclamation-Ecology Water Storage and Exchange Contract No. 09XX101700 dated January 29, 2009.

Mitigation

Provisions

How often must water be measured?	Monthly	What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)
How often must water use data be reported to Ecology?	Annually (Jan 31)	Total Annual Volume	What volume should be reported?
How often must water use data be reported to Ecology?	Annually (Jan 31)	Annual Peak Rate of Withdrawal (cfs)	States Bureau of Reclamation-Ecology Water Storage and Exchange Contract No. 09XX101700 dated January 29, 2009.

Measurement of Water Use

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE	COMPLETE	JANUARY 1, 2019

Development Schedule

Several small surface water diversions are located within close proximity on a small unnamed tributary to Bumping Lake. Water is diverted and conveyed to the cabin community through one of four main distribution lines. Water which is not consumptively used is either discharged via overflow, or to an individual on-site septic system.

Proposed Works

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

Proof of Appropriation

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S4-34941, subject to existing rights and the provisions specified above.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court within thirty (30) days of receipt of this Decision. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

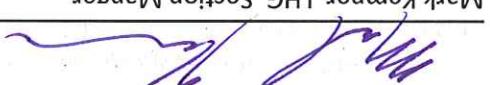
- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;

If you need this document in a format for the visually impaired, call the Water Resources Program at 509-575-2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Upon receipt of this Order, the parties of record shall file a written response to the Order within thirty (30) days of the date of service. The response must be filed in the same manner as described above. All other parties receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within thirty (30) days of the date the Order was mailed. The appeal must be filed in the same manner as described above.

The parties of record shall file a written response to the Order within thirty (30) days of the date of service. The response must be filed in the same manner as described above. All other parties receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within thirty (30) days of the date the Order was mailed. The appeal must be filed in the same manner as described above.

Mark Kemner, LHG, Section Manager
Water Resources Program/CRO
Department of Ecology



Signed at Yakima, Washington, this 12 day of JUNE 2014.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within thirty (30) days of the date the Order was mailed. The appeal must be filed in the same manner as described above.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

The appellant's reasons for believing the relief requested should be granted; and A request for relief, specifying the type and extent of relief requested.

INVESTIGATOR'S REPORT

BACKGROUND

Project Description

On April 8, 2004, Thomas R. and Anna L. Martinson filed Application No. S4-34941 with the Washington State Department of Ecology (Ecology) requesting an appropriation of public surface water. The application was later amended to include Ray Akers, then the entire Bumping Lake Summer Homes community. The applicant proposes to divert an instantaneous rate (Q_i) of 0.11 cubic-feet per second (cfs) and a cumulative annual diversion volume (Q_a) of 0.35 acre-feet per year (ac-ft/yr). The purpose of use is for group domestic (indoor only) supply year round, as needed.

The subject application qualifies for Ecology's Cabin Owner Mitigation Program. As directed by Senate Bill 6861, Ecology is providing water banking opportunities for Yakima Basin Cabin Owners with junior claims (post-1905) to purchase senior mitigation credits to offset the consumptive use of water during years of rationing by the US Bureau of Reclamation. Also, subject to application-specific suitability criteria, mitigation may be used to issue new water budget neutral water rights.

Consumptive use will be mitigated through purchase of mitigation credits from Ecology's Cabin Owner Mitigation Program (Trust Water Right Nos. CS4-00195CTCL(A)sb6, CS4-00195CTCL(B)sb6, and CS4-500195CTCL(C)sb6) – collectively known as Bruton Ditch. The application is therefore water budget neutral with respect to Total Water Supply Available (TWSA). Out-of-season and/or carry over impacts to instream flows will be managed with use of Water Storage and Exchange Contract No. 09XX101700 between Ecology and the United States Bureau of Reclamation.

Table 1: Summary of Application No. S4-34941

<i>Attributes</i>	<i>Proposed</i>
Applicant	Bumping Lake Summer Homes
Application Received	April 8, 2004
Instantaneous Quantity	0.11 cubic-feet per second (cfs)
Source	Unnamed Creek
Point of Diversion	NE½SW¼, Section 22, T. 16 N., R. 12 E.W.M.
Purpose of Use	Group Domestic (indoor only)
Period of Use	Year round
Place of Use	Bumping Lake Summer Homes

This project was presented at the Water Transfer Working Group (WTWG) on August 5, 2013. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. There were no objections to the cabins on Bumping Lake receiving surface water permits for mitigation by a senior water right from Taneum Creek, as long as the consumptive use quantity needed and the USBR.

A site visit was completed on July 15, 2013. Kelsey Collins (Ecology) and Tyson Carlson (Aspect Consulting) visited each available cabin owner to inspect the point of diversion, place of use, and answer questions regarding estimates of total or consumptive use.

In consideration of this application, Aspect Consulting reviewed available documents pertaining to the historic use of water, site conditions, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including adjudication and water rights records and water resource policy and guidance documents.

INVESTIGATION

This application qualifies for expedited processing under WAC 173-152-050(2)(d) which would result in providing for public water supplies. Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, this application has been processed by Aspect Consulting, LLC (Aspect Consulting) under Ecology Cost-Reimbursement Assignment No. ASP018 (Master Contract No. C1000185).

RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights program (TWRP) in the Yakima River basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44 or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream users and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the TWRP.

- **Water Resources Statutes and Case Law**

The subject application is categorically exempt under SEPA (WAC 197-11-305 and WAC 197-11-800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.

- **State Environmental Policy Act (SEPA)**

Notice of the proposed appropriation was published in The Yakima Herald of Yakima, Washington, on October 24 and 31, 2013. No comments were received during the 30-day comment period.

- **Public Notice**

The following requirements must be met prior to processing a water right application:

Legal Requirements for Application Processing

In addition, Ecology has sought consultation with Reclamation who controls all remaining un-appropriated waters of the Yakima River – including all tributaries and groundwater in continuity. Reclamation subsequently granted a release of water for the subject application via email received on February 10, 2014.

Site Description

The proposed point of diversion is located approximately 1,200 feet updrainage of the cabin community, in the northeast quarter of the southwest quarter of Section 22, in Township 16 N., Range 12 East of the Willamette Meridian (E.W.M.), in the Naches Water Resource Inventory Area (WRIA 38).

The point of diversion consists of several small surface water diversions located within close proximity on the unnamed tributary to Bumping Lake. Water is diverted and conveyed to the cabin community through one of four small diameter distribution lines. Water which is not consumptively used is either discharged via overflow, or to an individual on-site septic system.

Three cabins within the Bumping Lake Summer Homes community are supported by post-1905 claims. These include Adjudication Court Claim Nos. 00164 (Mayjut; Tract No. 16), 02199 (Kendig; Tract No. 10), and 02276 (USFS; Tract No. 16). In addition, one cabin (Tract No. 17) is supported by Court Claim No. 02276 which has a May 10, 1905 priority date and is subject to only curtailment during rationing years.

Domestic Water Use

Senate Bill 6861 directed Ecology to facilitate the purchase of senior mitigation credits to offset the consumptive use of out-of-priority or unpermitted water use. In response, Ecology (2006) completed a survey to identify the number of water users that rely on surface water, how they use water (in-house and/or outside irrigation), and how much water they use. Ecology received 285 completed surveys from water users with and without water rights. Ecology estimated the group's annual water use by multiplying the gallon per day identified on the survey by the number of days the cabin was occupied. In cases where a water duty was not provided, Ecology used criteria developed for mitigation during the 2005 drought and/or procedures outlined in the Washington State Department of Health (2009) Water System Design Manual.

Based on the available data, Ecology determined that the average seasonal recreational cabin uses approximately 100 gallons per day (gpd) or about 0.03 ac-ft/yr for occupancy up to 105 days per year. For consistency, Ecology has assumed the same consumptive use defined by rule (WAC 173-539(A)-050(3)) in upper Kittitas County as 30 percent of total use (Qa), or 0.01 ac-ft/yr per cabin. Therefore, for the 11 unpermitted cabins in the Bumping Lake Summer Homes community, 0.11 ac-ft/yr will be required to fully mitigate a new water right.

Based on this rationale, estimated total and consumptive use quantities by month are summarized in Table 2. Because most cabins are rustic and use very little water, and few are occupied year-round, the numbers are considered to be a liberal estimate of actual use.

Bumping Lake is a migratory barrier to anadromous salmonids (Bumping Lake Dam has no fish passage facilities), and the unnamed tributaries are too small and steep to provide habitat for anadromous

RCW 90.03.290 and RCW 90.44.060 require a determination that a new appropriation will not impair existing rights. There are no water right certificates, permits, or claims between the proposed point of diversion and Bumping Lake. Furthermore, Bumping Lake is a proportional massive water body which

will not be affected by the proposed appropriation.

Potential for Impairment

Contract. The appropriaition proposed under the subject application will be water budget neutral by dedicating 0.11 ac-ft/yr of consumptive use available from Ecology's Cabin Owner Mitigation Program. Month-by-month mitigation is offered to account for the project's indoor only use during the irrigation season (April 1 – October 31). Out-of-season (November 1 – March 31) use and/or potential carry over impacts to instream flows will be mitigated through the USBR-Ecology Water Storage and Exchange

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will not be affected by the proposed appropriation.

The small unnamed tributary has provided the cabin community's water supply for up to 50 years. The diversions is the only one located along the entire length of the tributary before discharging directly to Bumping Lake.

Availability

In accordance with RCW 90.54.020(1), the proposed appropriation for group domestic indoor use is a beneficial use of water. As detailed on the Application for Permit and observed during the site visit, the point of diversion is supported by the necessary infrastructure to deliver the full appropriation of water to the cabin community.

Beneficial Use

1. The proposed appropriation is a beneficial use;

2. Water is available for appropriation;
3. The proposed appropriation would not impair existing water rights; and
4. The proposed appropriation would not be detrimental to the public welfare.

This Report of Examination (ROE) evaluates the application based on the information presented above and determine that each of the following four requirements of RCW 90.03.290 has been satisfied: and in reference documents. To approve the application, Ecology must issue written findings of fact

Four Statutory Tests

Any new surface water appropriation in the Yakima Basin will result in a temporary permit being issued by Ecology until the Yakima Superior Court Adjudication is complete.

Total Use (acre-feet)	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Consumptive Use (acre-feet)
0.030	0.027	0.030	0.029	0.030	0.029	0.030	0.029	0.030	0.029	0.030	0.029	0.030	0.35	0.009

Table 2: Schedule of Estimated Total and Consumptive Use.

salmonids (Reclamation 2005). In addition, Washington Department of Fish and Wildlife (WDFW) fish distribution data indicate no occurrence of Bull Trout or other Endangered Species Act (ESA)-listed fish.

Therefore, no impairment to existing rights or to local habitat will occur. Assignment of 0.11 acre-feet is appropriate, given that the flow reduction resulting from this permitted use is below the consultation threshold in paragraph 18(b) of the USBR-Ecology contract.

Public Welfare

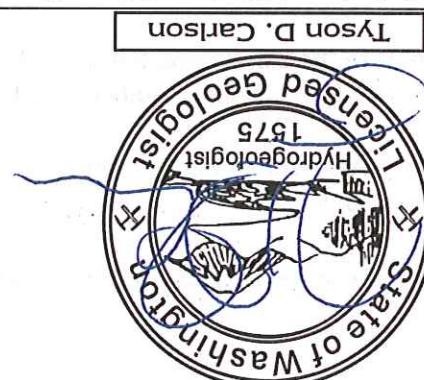
The proposed appropriation will provide authorization for domestic supply to the rural cabin community, and is not detrimental to the public interest as provisioned.

CITATIONS

Ecology 2006. 2006 Report to the Legislature, Potential Water Solution for Domestic Surface Water Users, Yakima Basin Camps & Cabin Owners. Publication No. 06-11-044. December 2006.

Reclamation, 2005. Phase I Assessment Report, Storage Dam Fish Passage Study, Yakima Project, Washington. Revised April 2005

WDFW. SalmonScape. <http://wdfw.wa.gov/mapping/salmonscape/index.html>.

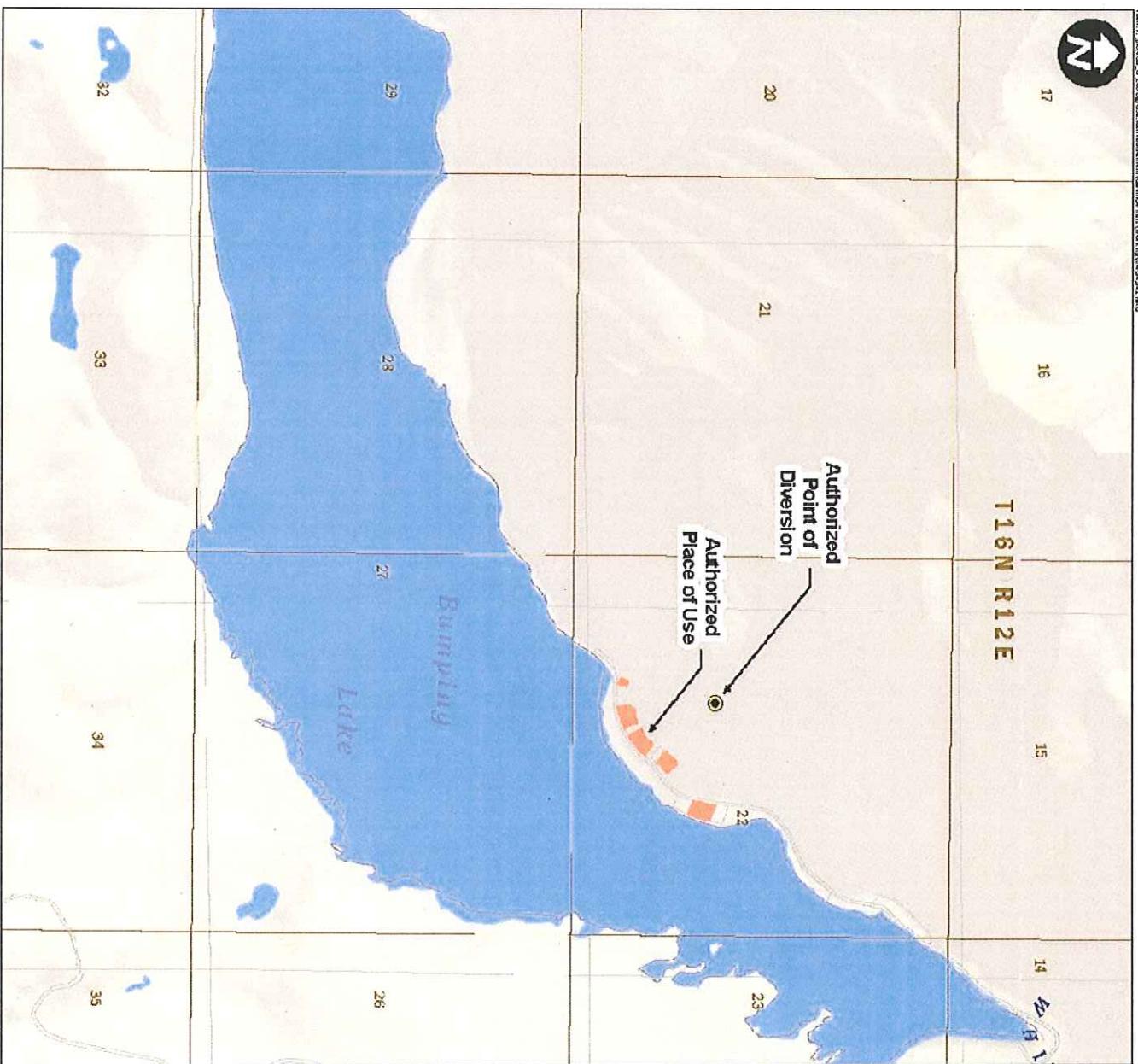
<p>Place of Use NE 4SW%, Section 22, T. 16 N., R. 12 E.W.M.</p> <p>Point of Diversions NE 4SW%, Section 22, T. 16 N., R. 12 E.W.M.</p> <p>Purpose of Use and Authorized Quantities 0.11 cfs, 0.35 ac-ft/yr for continuous group domestic use.</p>	<p>Section 22, T. 16 N., R. 12 E.W.M., Snoqualmie National Forest. Bumping Lake Summer Homes, Tract Nos. 1, 4-9, 11, 12, 14, and 15 all within the SW ¼ of unsurveyed Section 22, T. 16 N., R. 12 E.W.M., Snoqualmie National Forest.</p>	<p>Report by: Tyson D. Carlson</p>  <p>Reviewed by: Kelsey S. Collins, Water Resources Program</p> <p>Date 6/9/14</p>
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RECOMMENDATION

1. The proposed appropriation for group domestic use (indoor only) is a beneficial use of water;
 2. The quantity of water requested is made available by purchase of mitigation credits;
 3. The proposed appropriation will not impair senior water rights or local habitat; and
 4. The proposed appropriation will not be detrimental to the public interest.
- The conclusions based on the above investigation are as follow:

CONCLUSIONS

Attachment 1



Comments: Place of use and point of diversion are defined on the cover sheet under the heading "LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED."

LEGEND

- Places of Use:
- Local Road
 - Tax Parcel
 - Sections
- Authorized Point of Diversion



No. S4-34941

Bumping Lake Summer Homes
Ecology Cabin Owner Mitigation Program
T16N R12E Sector 22
Yakima County, Washington



January, 2014
0001200 Doc / DAH
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